



Federal Communications Commission
Washington, D.C. 20554

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DA 13-1001

Small Entity Compliance Guide

Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations

**MB Docket No. 00-168 and 00-44
FCC 12-44**

This Guide is prepared in accordance with the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the new rules adopted in the above-referenced FCC rulemaking docket(s). This Guide is not intended to replace the rules and, therefore, final authority rests solely with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide may, perhaps, not apply in a particular situation based upon the circumstances, and the FCC retains the discretion to adopt approaches on a case-by-case basis that may differ from this Guide, where appropriate. Any decisions regarding a particular small entity will be based on the statute and regulations.

In any civil or administrative action against a small entity for a violation of rules, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation; the FCC will consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or to clarify or update the text of the Guide. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

1-888-CALL-FCC (1-888-225-5322)
TTY: 1-888-TELL-FCC (1-888-835-5322)
Fax: 1-866-418-0232
fccinfo@fcc.gov

I. OBJECTIVES OF THE PROCEEDING

In the *Report and Order* in MB Docket No. 00-168 and 00-44, released April 27, 2012,¹ the Commission adopted rules requiring television broadcast stations' public inspection files to be made more accessible to the public by:

- Replacing the requirement that television stations maintain a paper public file at their main studios² with a requirement to submit documents for inclusion in an online public file, including the political file, to be hosted by the Commission;³
- Reducing the number of documents that television stations would be required to upload to an online public file by automatically linking to information already collected by the Commission;⁴
- Streamlining the information required to be kept in the online file, such as by excluding letters and emails from the public;⁵ and
- Giving the online public file a uniform organizational structure⁶ which will allow consumers to more easily navigate the public files.

II. BENEFITS

Broadcasters are afforded considerable flexibility in how they meet their public interest obligation to air programming responsive to the needs and interests of their communities of license. Among other things, they are required to maintain a public inspection file, which gives the public access to information about the station's operations.⁷ The Commission's Order modernizes this public inspection file requirement by making the public file information more accessible to members of the public who otherwise would have to visit a station during business hours to review the public file.

III. COMPLIANCE REQUIREMENTS

1. Background Information: Definitions

¹ *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Second Report and Order, 27 FCC Rcd 4535 (2012), available at http://fjallfoss.fcc.gov/edocs_public/attachmatch/FCC-12-44A1_Rcd.pdf ("Public Files Second Report and Order").

² *Public Files Second Report and Order* at ¶¶ 2, 4.

³ See *infra* Section III.3.C.

⁴ See *infra* Section III.3.B.

⁵ See *infra* Section III.3.D.

⁶ The Commission hosted broadcaster public file is organized by pre-set folders named after each of the public file document type. A video demonstration and screenshots of the public and broadcaster views of the system are available at <http://www.fcc.gov/events/demonstration-online-public-inspection-file-interface#screenshots>.

⁷ *Review of the Commission's Rules regarding the Main Studio Rule and Local Public Inspection Files of Broadcast Television and Radio Stations*, Report and Order, 13 FCC Rcd 15691, ¶ 18 (1998), *recon. granted in part* Memorandum Opinion and Order, 14 FCC Rcd 11113 (1999).

- **Public Inspection Files:** A Public Inspection File is a file that must be made available for public inspection and contain materials set forth in the Commission's rules.⁸ For a complete list of materials that this Report and Order requires to be included in the online public inspection file, please refer to the Commission's website: <https://stations.fcc.gov/about-station-profiles/>.⁹

The following are examples of materials that must be included in the public inspection file:

Issue/Programs lists: a station's prepared lists of programs aired by the station during the preceding quarter that provided the station's most significant treatment of community issues. 47 C.F.R. §§ 73.3526(e)(11)(i), 73.3527(e)(8).

Political File: The political file chiefly consists of "a complete and orderly record ... of all requests for broadcast time made by or on behalf of a candidate for public office, together with an appropriate notation showing the disposition made by the licensee of such requests, and the charges made, if any, if the request is granted." 47 C.F.R. § 73.1943(a). For the purposes of this regulation, political files in existence prior to August 2, 2012 shall continue to be retained at the station until the end of the individual political file retention period.¹⁰ Political files created on or after the effective date must be uploaded as required in timeframe below. The political file rule requires that licensees "keep and permit public inspection of a complete and orderly record (political file) of all requests for broadcast time made by or on behalf of a candidate for public office, together with an appropriate notation showing the disposition made by the licensee of such requests, and the charges made, if any, if the request is granted."¹¹

- **Designated Market Area (DMA):** A DMA is a geographic area defined by The Nielsen Company as a group of counties that make up a particular television market. The top 50 DMAs, for the purposes of this proceeding, are the DMAs ranked 1-50 by The Nielsen Company for 2011-2012. See Nielsen Local Television Market Universe Estimates, available at the following website: <http://www.nielsen.com/content/dam/corporate/us/en/public%20factsheets/tv/nielsen-2012-local-DMA-TV-penetration.pdf>.

2. Entities required to take action under this proceeding

Public file uploading requirements are mandatory for all television stations. Radio licensees and multichannel video programming distributors are not included in this proceeding at this time.

3. Station public file obligations

⁸ See 47 C.F.R. §§ 73.3526, 73.3527.

⁹ *TV Station Profiles & Public Inspection Files*, Federal Communications Commission, <https://stations.fcc.gov/about-station-profiles/>.

¹⁰ See Public Notice, *Effective Date Announced for Online Publication of Broadcast Television Public Inspection Files*, DA 12-1057 (rel. July 3, 2012).

¹¹ *Public Files Second Report and Order* at ¶¶41-42.

A. General requirements.

Television station licensees or applicants, including both commercial and non-commercial educational television stations, must place contents of their public inspection file on the Federal Communications Commission's website within a specified time frame. The Commission is not imposing a new recordkeeping requirement. Instead, only information already required to be included in the local file¹² will need to be posted online.

There are two general categories of public files: (1) files that have previously been submitted to the Commission; and (2) files that are maintained at the local stations.

B. Previously uploaded files

Prior to the Commission's Report and Order, a station's public file was composed of (1) items required to be filed with the Commission; and (2) items required to be kept in the public file housed at the station.

The following items had to be filed with the Commission or otherwise be made available on the Commission's website. The files listed below, to the extent the Commission has them on file, have been linked by the Commission to each station's online public file site:

- FCC Authorizations (as required by Sections 73.3526(e)(1) and 73.3527(e)(1));
- Applications and related materials (as required by Sections 73.3526(e)(2) and 73.3527(e)(2);
- Contour Maps (as required by Sections 73.3526(e)(4) and 73.3527(e)(3);
- Ownership reports and related materials (as required by Sections 73.3526(e)(5) and 73.3527(e)(4));
- Portions of the Equal Employment Opportunity file (as required by Sections 73.3526(e)(7) and 73.3527(e)(6);
- The Public and Broadcasting manual (as required by Sections 73.3526(e)(8) and 73.3527(e)(7));
- Children's television programming reports (Form 398)(as required by Section 73.3526(e)(11)(iii));
- DTV transition education reports (Form 388) (as required by Sections 73.3526(e)(11)(iv) and 73.3527(e)(13)).

C. Public inspection files to be uploaded to the Commission's website

¹² The term "local file" is used in this guide as used in the *Public Files Second Report and Order* to refer to the file maintained at the station's main studio under the Commission's current rules. See *Public Files Second Report and Order* at n.3 (referencing 47 C.F.R. § 73.3526(b), 73.3527(b)).

In addition to the previously uploaded items that the station already submitted to the Commission,¹³ the following items that were previously maintained at the station now must be uploaded to the Commission's website:

- A list of chief executive officers or members of the executive committee of an entity sponsoring or furnishing broadcast material concerning political matter or matter involving the discussion of controversial issues/public importance (as required by Section 73.1212(e));
- Donor lists for non-commercial educational channels ("NCEs") (as required by Section 73.3527(e)(9));
- Citizen agreements (as required by Section 73.3526(e)(3));
- Records concerning children's programming commercial limits (as required by Section 73.3526(e)(11)(ii));
- Time brokerage agreements (as required by Section 73.3526(e)(14));
- Joint sales agreements (as required by Section 73.3526(e)(16));
- Class A TV documentation of continuing eligibility pursuant to 73.6001 (as required by Section 73.3526(e)(17));
- Political file (as required by Sections 73.3526(e)(6) and 73.3527(e)(5));
- Portions of the Equal Employment Opportunity file (as required by Sections 73.3526(e)(7) and 73.3527(e)(6));
- Material relating to FCC investigations and complaints (as required by Sections 73.3526(e)(10) and 73.3527(e)(11));
- Issues/Programs lists (as required by Sections 73.3526(e)(11)(i) and 73.3527(e)(8));
- Local public notice certifications and announcements (as required by Sections 73.3526(e)(13) and 73.3527(e)(10));
- Must-carry or retransmission consent elections (for commercial stations) or must-carry requests (for noncommercial stations) (as required by Sections 73.3526(e)(15) and 73.3527(e)(12));

For a list of items that must be included in the public file, please refer to the Commission's website: <https://stations.fcc.gov/about-station-profiles/>.¹⁴

D. Public inspection files required to continue to be maintained at the station.

- Stations should retain letters and emails from the public, as required by Section 73.3526(e)(9),¹⁵ at their station. These files should not be uploaded to the Commission's website. Further, the Commission does not require stations to retain social media messages in their correspondence file.

¹³ Refer to "Previously uploaded files," in Section Compliance Requirements (3)(B) *supra*.

¹⁴ See *supra* fn.8.

¹⁵ See 47 C.F.R. § 73.3526(e)(9).

- Non-commercial stations are not required to retain letters and emails from the public at their station.
- In lieu of requiring stations to upload onto the Commission’s website or announce on their websites the availability of their correspondence files at their main studios, the Commission has included language in the online public file that directs the public to the station’s main studio to access letters and email from the public.

E. File upload requirements

Requirement 1: Public file upload to the Commission’s website.

Stations must upload files as specified above¹⁶ to the Commission website. At the time of license renewal, stations must certify their compliance with the requirements in this Order by checking a box on the license renewal form (Form 303-S).

- Timing.* The station must upload the political file immediately, absent unusual circumstances.¹⁷ Whether maintained at the station or online, the contents of the political file are time-sensitive.
- Format and metadata.* The Commission does not impose specific formatting requirements on broadcasters at this time, although stations should upload relevant documents either in their existing electronic format or in a simple, easily created electronic format such as a .pdf. Document metadata¹⁸ does not need to be uploaded. The Commission does not require a specific filing format, but the station must maintain an orderly file.
- Organization and updating files.* To assist in the orderly upload of files, the Commission will create and propagate subfolders for candidates and will provide stations with the ability to create additional subfolders and subcategories in compliance with their own practices. Stations are responsible for maintaining their online public file. If a document has been replaced, a contract has expired, or the rules no longer require that a particular document be part of the public file, then the station will be responsible for taking appropriate action to reflect these changes.¹⁹

Requirement 2: Station website link to the Commission’s website.

If the station has a website, then the station must provide a hyperlink from the station’s website’s homepage to the station’s public inspection file hosted on the Commission’s website.

Requirement 3: Back-up files.

¹⁶ See *supra* Section III.3.B-C.

¹⁷ See 47 C.F.R. § 73.1943.

¹⁸ “Document metadata” refers to how, when, where, and who created the data and under what standards.

¹⁹ See 47 C.F.R. § 73.3526(b)(3) and §73.3527(b)(2).

- i. *Political files back-up files.* For political files only, the Commission requires stations to maintain local electronic back-up files at their stations. This will ensure that in situations where the Commission's online public file is temporarily unavailable, stations can comply with their statutory obligation to make that information available to candidates, their representatives, non-candidate political time buyers, and the public generally as soon as possible. To minimize any burden imposed by this requirement, the Commission is developing tools to allow stations to easily copy their online public files, which contain the political files.
- ii. *Full public inspection file back-up files.* If at any time the Commission's online file becomes temporarily inaccessible and stations are unable to upload new documents to the Commission's website, then stations must maintain those documents and upload them to the Commission's online file once it becomes available again for upload.²⁰ The Commission will create and make available to stations and interested parties their own daily copy of the station's public file. Stations or interested parties may download a complete copy of their public file or automate a periodic synchronization.

Requirement 4: Station self-verification that Commission public file for the station is updated.

If the station's public file site is inaccurate or incomplete, then the station will be responsible for posting the complete and correct materials.

4. **Filing announcements requirements**

Stations are required to revise their on-air pre- and post-filing renewal announcements to reflect the availability of a station's renewal application on the Commission's website, as reflected in Appendix A of the *Second Report and Order*.²¹

5. **Implementation timelines**

- A. As of August 2, 2012, all stations were obligated to begin uploading public files listed in Subsection III.3.C above, but see below for specific timelines regarding political files.
- B. For political files (as required under Sections 73.3526(e)(6) and 73.3527(e)(5)), the following phase-in timeline applies for stations as specified below:
 - From August 2, 2012 to June 30, 2014:
During this period, on a going forward basis, station affiliates of the top four national networks (Fox, ABC, CBS, NBC) licensed to serve communities in the top 50 Designated Market Areas (DMAs) must upload their political files to the Commission website.

²⁰ *Public Files Second Report and Order* at ¶¶92-96.

²¹ *Public Files Second Report and Order*, Appendix A at ¶ 6.

Stations not affiliated with the four national networks, regardless of size or market served, or station affiliates of the top four national networks not serving communities in the top 50 DMAs, are exempt from posting their political files on the Commission's website for the time period of August 2, 2012 to June 30, 2014.

- As of July 1, 2014:

Effective on July 1, 2014, all stations, regardless of community served or affiliation, must upload all new political files to the Commission's website.

C. Voluntary uploading of political files:

Any television station that is not required to place its political file on the Commission's website before July 1, 2014, may voluntarily do so instead of retaining the political file at the station. However, once a station decides to use the online system to upload political files, it may not switch back to a hard copy system stored locally at the station. After the online system is used, the station must upload all required political files and permanently use the online system.

Stations may not voluntarily upload pre-August 2, 2012 political files or stop affording access to them locally.

D. Media Bureau July 2013 Public Notice prior to full implementation:

The Media Bureau will issue a Public Notice by July 1, 2013 seeking comment on the impact of these rules.

This Public Notice will give commenters – including the initial group of stations to use the online political file, stations that have yet to transition, and members of the public that review the online political file – an opportunity to provide the Commission with information regarding the impact and utility of the online political file. The Public Notice will enable the Commission to consider whether any changes should be made before all stations upload their political files starting July 1, 2014.

6. Procedures for a station withholding public file materials or information submitted to the Commission

Stations may request that materials or information submitted to the Commission be withheld from public inspection or redacted under Section 0.459 of the Commission's rules.²²

7. Station hardship waivers requests

Stations seeking waivers should provide the Commission with information documenting (1) the economic hardship the station would incur in complying with this requirement; (2) its technical inability to do so; or (3) such other reasons as would warrant waiver under our general waiver standards.²³

IV. RECORDKEEPING

²² 47 C.F.R., § 0.459.

²³ *Public Files Second Report and Order* at ¶ 50 (citing 47 C.F.R. § 1.3).

Previously, television broadcasters were required to maintain a copy of their public inspection files at their main studios. This Order replaces that requirement by obligating stations to submit documents for inclusion in an online public file, including the political file, to be hosted on the Commission's website. Television stations will only be responsible for uploading and maintaining items that are not already filed with the Commission pursuant to pre-existing regulatory requirements, such as (1) FCC authorizations; (2) applications and related materials; (3) contour maps; (4) ownership reports and related materials; (5) portions of the equal employment opportunity file; (6) the public and broadcasting manual; (7) children's television programming reports (Form 398); and (8) DTV transition education reports (Form 388). The Commission will automatically import those files into the station's online public file.

The Order also excludes some items from the online public file requirement, such as the station's political files in existence prior to August 2, 2012, and letters and emails from the public.²⁴ The Order also excludes other items proposed by commenters to the online public file requirement, including weekly announcements of the existence of the public file, sponsorship identifications, and shared services agreements.

V. IMPACT ON SMALL BUSINESS

The Commission minimizes and modernizes reporting requirements on all television broadcast stations by hosting all online public files, instead of requiring stations to host their own public file. Prior to the order, stations were already obligated to upload over one-third of the required public file contents. The Commission adopted a six-month transition period to lessen the burden on stations from uploading the rest of the file. After this transition period, the increased efficiencies realized by small entities will outweigh any possible burdens. The Commission temporarily exempts all stations that are not in the top 50 DMAs and all stations not affiliated with the top four national television broadcast networks from posting their political file materials online until July 1, 2014. After that date, those stations will be required to upload new political file material, but only on a going-forward basis. This will give non-affiliated broadcasters and smaller market additional time to familiarize themselves with the online filing requirements before they must begin uploading their political files.

²⁴ Stations must continue to maintain letters and emails from the public at their station.

INTERNET LINKS

Report and Order

http://fjallfoss.fcc.gov/edocs_public/attachmatch/FCC-12-44A1.pdf (PDF)

http://fjallfoss.fcc.gov/edocs_public/attachmatch/FCC-12-44A1.doc (WORD)

http://fjallfoss.fcc.gov/edocs_public/attachmatch/FCC-12-44A1.txt (TEXT)

http://fjallfoss.fcc.gov/edocs_public/attachmatch/FCC-12-44A1_Rcd.pdf (FCC Record)

<http://www.gpo.gov/fdsys/pkg/FR-2012-07-03/pdf/2012-16246.pdf> (Federal Register)

Erratum

http://fjallfoss.fcc.gov/edocs_public/attachmatch/DOC-313928A1_Erratum.doc

Chairman and Commissioner Statements

http://fjallfoss.fcc.gov/edocs_public/attachmatch/FCC-12-44A2.pdf

http://fjallfoss.fcc.gov/edocs_public/attachmatch/FCC-12-44A3.pdf

http://fjallfoss.fcc.gov/edocs_public/attachmatch/FCC-12-44A4.pdf

FCC TV Station Profiles & Public Inspection Files Webpage Login and Frequently Asked Questions

<https://stations.fcc.gov/faq/#broadcasters-login>